MEMORANDUM OF LAW

A petition was initiated by a resident group of the City of Saint Paul, Minnesota (the "City" or "Saint Paul") seeking to exercise their right to referendum on Ordinance 18-39 concerning the organized collection of solid waste on the municipal election ballot. For many years, the City has utilized an open hauling system whereby its residents contracted privately with haulers who are licensed to collect mixed municipal solid waste in the City, and compete with one another for business. At some point in 2016, City officials began exploring the possibility of organizing collection of mixed municipal solid waste in the City pursuant to Minnesota Statute § 115A.94 of the Waste Management Act.

Minn. Stat. § 115A.94 sets out processes to be followed by the governing body of a city in deciding and implementing organized collection. The statute provides that a "local government unit may organize collection as a municipal service or by ordinance, franchise, license, negotiated or bidded contract, or other means…." § 115A.94, Subd. 3. Pursuant to § 115A.94, the Saint Paul City Council ("City Council") notified the public and the licensed garbage collectors in the City and held public hearings on the issue. Because the City had more than one licensed garbage collector within the City, it was required to meet and negotiate exclusively with those collectors. § 115A.94, Subd.4(d). Under this provision of the statute, licensed collectors and the City negotiated and discussed various priorities and worked to develop a proposal "in which interested licensed collectors, as members of an organization of collectors, collect solid waste from designated sections of the city…." *Id.* The statute further provides that:

> The initial organized collection agreement executed under this subdivision must be for a period of three to seven years. Upon execution of an agreement between the participating licensed collectors and city or town, the city or town shall establish organized collection through appropriate local controls… § 115A.94, Subd. 4(d).

Eventually, pursuant to this section of the statute, the City entered into a contract (the "Contract") with the licensed garbage collectors (referred to as the "Consortium" in the Contract) for a term of five years. The City executed the Contract with the Consortium on November 14, 2017. The Contract sets the agreed upon rates to be charged for those service levels, requires the Consortium to provide collection services to all residential dwelling units as defined in the Contract, states that the Consortium has the sole and exclusive right to provide the garbage services during the term of the Contract, and sets out detailed terms of billing, invoicing and payment.

Once the Contract was executed, the City was required to "establish organized collection through *appropriate local controls*." § 115A.94, Subd. 4(d) (emphasis added). Due to the requirements of other applicable state statutes, the local control used to establish organized collection took the form of ordinances. On September 5, 2018, the City enacted two ordinances (18-39 and 18-40) to implement organized collection. The ordinance at issue in this petition is Ordinance 18-39 which created Chapter 220 of the City Code entitled "Residential Coordinated Collection." Chapter 220 created general regulations related to coordinated collection and established rates, billing and collection procedures.

Petitioners are residents of the City who oppose the City's organized collection scheme and seek to exercise their right to referendum. The City Charter provisions at issue in this lawsuit are contained in § 8 of the Charter which is a general provision allowing residents to require ordinances to be submitted to a vote upon submission of a petition. § 8.05 of the City Charter states that:

> Any ordinance or resolution upon which a petition is filed, other than an emergency ordinance, shall be suspended in its operation as soon as the petition is found sufficient. If the ordinance or resolution is not thereafter entirely repealed, it shall be placed on the ballot at the next election, or at a special election called for that purpose, as the council shall determine…..

Charter § 8.05 mandates that any ordinance may be subject to referendum by a petition filed within forty-five (45) days after its publication. Petitioners collected a total of 6,469 signatures on petitions related to Ordinance 18-39 and timely filed the petition within the forty-five day requirement. The petition at issue in this case, seeking a referendum to repeal Ord. 18-39, was received by the City Clerk on October 16, 2018. Ultimately, the City Council found that the petition was sufficient to satisfy the minimum signature requirements under the City Charter based on the report of the City Clerk (via the Ramsey County Elections Manager). However, the City Council also found that "the provision of the City Charter allowing referendum for the subject matter of the Petition is preempted by Minnesota Statutes §§ 443.28 and 115A.94, and is an unconstitutional interference with the Contract between the City and the Consortium, and conflicts with state public policy." Resolution 18-1922. As a result the City Council directed the City Clerk not to submit Ordinance 18-39 as a ballot question for the next election. *Id*.

On February 7, 2019, Petitioners commenced the current lawsuit against Respondents City of Saint Paul, Minnesota, the City Clerk and the Ramsey County Elections Manager. Petitioners ask this Court to issue an Order pursuant to Minn. Stat. § 204B.44 or Minn. Stat. §555, that directs the immediate suspension of Ordinance 18-39 pending approval or disapproval by the voters in Saint Paul." Petitioner argues that the City Charter provides its residents the broadest allowable authority under the home rule amendment of the Minnesota Constitution, and that referendum power on any ordinance and power to amend the Charter are all expressly reserved for the residents in Saint Paul.[1] Petitioners are seeking an order from this Court requiring the City to place the issue on the ballot for the election in November, pursuant to Minnesota Statute § 204B.44 or for declaratory relief under Minnesota's Declaratory Judgment Act (Minn. Stat. § 555.11).

[1] The City of Saint Paul is a Home Rule Charter city as classified under Minnesota Statutes Chapter 410.

I. THE CITY COUNCIL DID NOT PROPERLY EXERCISE ITS AUTHORITY IN REFUSING TO HAVE ORDINANCE 18-39 PLACED ON THE BALLOT.

Saint Paul, like other home rule charter cities, has broad authority to regulate its affairs, and home rule charters prevail over general statutes pertaining to subjects proper for municipal regulations. *State ex. rel. Lowell v. Crookston*, 252 Minn. 526, 91 N.W.2d 81, 83 (1958). Under Minnesota Statute, and consistent with the Minn. Const. art. XII § 4, a home rule charter "may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done." Minn. Stat. § 410.07. When interpreting statutes the first place the court must look to for meaning is the text of the statute itself. *Caminetti v. United States*, 242 U.S. 470, 485 (1917). In judicial construction of statutes courts are guided by well-established rules. This Court cannot assume a legislative intent in plain contradiction to words used by the legislature. *Loew v. Hagerle Brothers*, 222 Minn. 258, 24 N.W.2d 278. The primary object in the interpretation of any statute is to ascertain, if possible, and to give effect to the intention of the legislature that enacted the law. *Badger Dome Oil Co. v. Hallam*, 99 F.2d 293 (8th Cir. 1938). The general rule is that where language is unambiguous, the clearly expressed intent must be given effect and there is no room for construction. *Montgomery Ward & Co. v. Snuggins*, 103 F.2d 458 (8th Cir. 1939); *Hickok v. Margolis*, 221 Minn. 480, 22 N.W.2d 850 (1946).

Furthermore, a city's charter is, in effect, its local constitutions. *See Woo v. Superior Court*, 83 Cal.App.4th 967, 974 (2000) (A city charter is the city's constitution), citing, *City and County of San Francisco v. Patterson*, 202 Cal.App.3d 95, 102 (1988). In municipal law, a city charter is the city's constitution. *See Phillips v. City of Atlanta*, 77 S.E.2d 723, 727 (Ga. 1953) (charters "confer and define powers and provide for machinery to operate the government."); *Bivens v Grand Rapids*, 443 Mich. 391, 401; 505 N.W.2d 239 (1993) ("A charter is a city's constitution").

Saint Paul reserved legislative power for its people including the right to a referendum on *any* ordinance pursuant to § 8.05 of the City Charter. Specifically, the Charter provides that a petition "signed by registered voters equal in number to eight (8) percent of those who voted for the office of mayor" at the last election may compel immediate suspension of an ordinance, pending its approval by the voters, upon a finding of sufficiency by the city clerk and council. Charter at §8.02(1). The mayoral election on November 7, 2017, had 64,646 first choice votes for mayor. Petitioners Butler and Dolan are voter residents of Saint Paul and helped circulate the Petition for Referendum. As a result, the number of required signatures for a petition for referendum is 4,932 (or eight percent). A petition for referendum on Ordinance 18-39 was timely filed in October 2018, and the Ramsey County Elections Manager determined that it contained enough valid signatures to comply with the Charter requirements. The City Council directed the City Clerk not to submit the Referendum for placement on the ballot.[2]

Petitioners brought this Petition in an effort to have this Court order that the Referendum be immediately placed on the municipal election ballot. This Court looks to § 8.05 which states that the ordinance which is subject of a referendum must be "suspended in its operation as soon as the petition is found sufficient." The Charter specifically outlines the method by which a referendum must be brought. Here, there is no evidence in the record that the petition presented in October 2018 was deficient in anyway. Respondents concede that the petition was sufficient. Consequently, it was an improper exercise of power for the Council to refuse to place the Referendum on the November 2019 ballot.

[2] The City Elections Office accepted 5,541 signatures as valid and referred the Petition to the City Clerk to present to the City Council. On November 14, 2018, the City Council accepted the Petition as sufficient to satisfy the signature requirements of Section 8.02 of the Charter. That same day, however, the Council simultaneously voted not to place the Referendum on the ballot. Resolution 18-1922 reflects the City Council's refusal to include the Referendum of Ordinance 18-39 on the ballot for the November 5, 2019 election.

II. ALLOWING REFERENDUM OF ORDINANCE 18-39 DOES NOT CONFLICT WITH THE REQUIREMENTS OF MINNESOTA STATUTE SECTION 115A.94 AND CHAPTER 443.

Conflict preemption exists between state law and municipal regulation when the law and the regulation "contain express or implied terms that are irreconcilable with each other", when the "regulation permits what the statute forbids", or when the "regulation forbids what the statute permits." *Bicking v. City of Minneapolis,* 891 N.W. 2d 304, 313 (Minn. 2017). In Resolution 18-1922, the City states that the Referendum is expressly preempted by the organized collection statute. Minn. Stat. § 115A.94, Subd. 6 reads as follows:

> **Subd. 6. Organized collection not required or prevented.**
>
> (a) The authority granted in this section to organize solid waste collection *is optional* and is *in addition to authority to govern solid waste collection granted by other law*.
>
> (b) Except as provided in subdivision 5, a city, town, or county is not:
>
> (1) required to organize collection; or
>
> (2) prevented from organizing collection of solid waste or recyclable material.
>
> (c) Except as provided in subdivision 5, a city, town, or county *may exercise any authority granted by any other law, including a home rule charter,* to govern collection of solid waste.
>
> (emphasis added).

The City contends that §115A.94 is a detailed statute that provides the process for how organized collection is done, which this Court does not dispute. The City, however, goes on to argue that conflict preemption exists because a referendum allowing repeal of the ordinance contradicts the process mandated in §115A.94, and will result in a local law that is irreconcilable with the process in §115A.94. This Court disagrees. While §115A.94 is specific and detailed in the process that must be followed if organized trash collection is implemented, it is not the exclusive process.

The Petitioners do not take issue with the process the City followed in entering into the Contract with the Consortium or passing ordinances based on the resolution. Rather, the Petitioners argue that the statute establishes the *minimum* requirements for organized trash collection and is not the exclusive process to follow. Furthermore, Petitioners argue that the statute itself allows for a referendum due to the "other law" provision in the statute. The City contends that the "other law" provision relates to the possible existence of another charter provision that specifically deals with solid waste and garbage collection, consistent with its interpretation of the ruling in *Jennissen v. City of Bloomington*, 913 N.W.2d 457, 462 (2018) .[3]

This Court finds that in §115A.94, the legislature is clear, and organized trash collection is: 1) optional; 2) in addition to authority granted by "other law"; and 3) can be subject to a home rule charter and referendum. One of the defining characteristics of a home rule charter city is the power of the citizens to engage in initiative, referendum, recall, and charter amendment power under Minn. Stat. Chap. 410. The plain meaning of the statute if further confirmed by *Jennissen* in which the Minnesota Supreme Court found that:

> The strongest signal of the Legislature's intent not to preempt, but to provide municipalities with considerable flexibility, is found in subdivision 6. In addition to clarifying that organizing collection is optional for municipalities, subdivision 6 expressly states that "the authority granted in this section . . . is *in addition to authority* to govern solid waste collection *granted by other law*," id., subd. 6(a) (emphasis added), "*including a home rule charter.*" Id., subd. 6(c) (emphasis added). Thus, section 115A.94 expressly leaves room for any municipal action that is authorized under a city charter or other law relating to organized collection or the governance of solid waste collection. *Id. at* 462.
>
> (emphasis in original).

The legislature contemplated that municipalities would exercise additional authority with

[3] The Court in *Jennissen* only considered the matter of "field preemption" and found that the legislature did not intend to occupy the field of regulation of the process by which municipalities organize collection of solid waste. *Id.* at 460, 461.

respect to a home rule charter or other law. The referendum power granted by the Charter, if passed, would meet the meaning of "other law."

The City also argues that Minn. Stat. § 443.28 also expressly preempts the Referendum for similar reasons in that a referendum would contradict the statutory process set forth under § 443.28 because the statute delegates authority to the governing body of a city without the need for voter approval. Again, this Court disagrees.

Minn. Stat. § 443.34 provides that:

> The provisions of sections 443.26 to 443.35 shall be construed as *an addition to existing charter or statutory powers of any city* of the first class and *not as an amendment to or repeal thereof,* the purpose of these sections being to permit any city of the first class to engage in the activities hereinbefore authorized, to promote the public health, safety, welfare, convenience, and prosperity of the city.

(emphasis added).

Here again, the legislature clearly provides that while the City Council is authorized to set rates for garbage collection, this authority is in addition to the powers of a charter city of the first class[4] and is not intended to preempt or circumvent already delineated powers of a home rule charter.

Additionally, the City argues that it is implicit as a practical matter that § 115A.94 does not allow for a city's decision as to organized collection to be undone by voters after the contract was executed. *See e.g.* § 115A.94, Subd. 4(a) (providing for a different process to be followed if a city does not negotiate a contract with licensed collectors that must be started "before implementing an ordinance, franchise, license, contract, or other means of organizing collection"). Subd. 4(d) of § 115A.94 required the City to negotiate with licensed collectors first, then use local controls (such as an ordinance) to establish organized collection in the City. Indeed, the City did

[4] There are three others in cities of the first class: Minneapolis, Duluth, and Rochester.

engage in negotiation with licensed collectors before implementing the ordinance, however, the process of negotiation does not necessarily result in the end of discourse or that the electorate, due to a cease in negotiation, does not have any other options for influencing the passing of ordinances. This notion is contradictory to the broad § 8 referendum power that allows for this mechanism on *any* ordinance.

The City goes on to argue that an implied conflict also exists because the legislature intended for the "governing body" of the City to be limited to the City Council. Saint Paul as a Charter City is, by nature, a city that can make changes to fit its own needs and educates voters to be engaged in law making. (The Home Rule Charter and Mission *available at* https://www.stpaul.gov/departments/city-council/charter-commission). Notably, the City Charter does not include any modifying language as to what types of ordinances can be submitted for referendum. As § 8.01 of the City Charter states that "the people shall have the right to…require ordinances to be submitted to a vote." Given the absence of limiting language in § 8.01 and Saint Paul's status as a charter city, this Court is not convinced that "governing body" is limited to the City Council.

III. THE REPEAL OF ORDINANCE 18-39 WOULD NOT BE AN UNCONSITUTITONAL IMPAIRMENT OF CONTRACT.

Both the United States Constitution and the Minnesota State Constitution contain a Contract Clause that prohibits the passage of laws that unconstitutionally impair contracts. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art I, § 11. To that end, the City takes the position that the repeal of Ordinance 18-39 would unconstitutionally impair the Contract between the City and the Consortium. In addition, the City argues that not every contract that it enters into is subject to the referendum provision. The City concedes that not every contract requires an ordinance.

The test for the presence of a contract clause violation is found in *Christensen v. Minneapolis Municipal Employees Retirement Board, et al.,* 331 N.W. 2d 740, 750- 51. (Minn. 1983). The Minnesota Supreme Court analyzed three factors. First, the court asks whether the law caused substantial impairment of a contract at all. Second, in the event a substantial impairment is found, it may still be permissible if there is a significant and legitimate public purpose behind the legislation. Third, the legislature's action is examined in the light of this public purpose to see whether the adjustment of the rights and liabilities of the contracting parties is reasonable and appropriate given the public purpose justifying the legislation's adoption. *Id.*

A. The Referendum Would Not Substantially Impair the Contract if Passed.

Section 13.6 of the Contract includes a Force Majeure clause which contemplates a variety of acts, including legislative, judicial, or executive acts, which could render performance of the contract unattainable. The Minnesota Supreme Court has long held that the power of referendum is limited to acts which are legislative in character. *Hanson v. City of Granite Falls,* 529 N.W.2d 485, 487 (Minn. Ct. App. 1995). Because the power of referendum fundamentally applies to the legislative powers of a city, the power of the electorate to place a referendum on an ordinance is a legislative act, and one that is also broadly granted by the City Charter. Furthermore, it naturally follows that the City which drafted, negotiated, and signed the contract knew that a referendum was a bargained for reality. Additionally, the City Charter includes language that the ordinance should immediately be suspended upon a proper petition for referendum being brought. This is a legislative act.

The City was also well aware of the existence of Minn. Stat. § 204B.44, which allows for the very type of petition that was filed in this action, to be presented to the judiciary to correct an error or omission upon a ballot—which if granted, would satisfy the meaning of a judicial act

under the Force Majeure clause. The City counters stating that the clause is merely generic and non-specific in nature. "If the contract language is plain, clear, and unambiguous, there is no interpretation necessary and the court's task is to enforce the agreement." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W. 2d 700, 704 (Minn. 1999). This Court will not ignore the plain language of the contract and, moreover, it is difficult to understand how a contract could be "impaired" by the very types of events for which it specifically provides.

The City also relies, in part, on *Davies v. City of Minneapolis* to support its arguments. 316 N.W.2d 498 (Minn. 1982). *Davies* involved a challenge to the funding mechanisms for the Metrodome's construction. To pay for construction, the State issued revenue bonds, which were to be funded by a new hotel-motel liquor tax. The levying of such a tax was a statutory prerequisite for any municipality that sought to build a stadium within its borders. On October 15, 1979, the State issued revenue bonds, and on November 1, 1979, a group of residents introduced a proposed charter amendment that sought to repeal the hotel-motel liquor tax. The city council refused to place the proposed charter amendment on the ballot, and the residents sued. The Minnesota Supreme Court affirmed the city's decision not to place the proposed amendment on the ballot, noting that it would unconstitutionally impair the contractual rights of stadium bondholders. Specifically, the court noted that state law required the tax to be used to pay debt service on the bonds, and that the tax agreement "constituted a contract with and for the security of all bondholders of the bonds and revenue anticipation certificates secured by the tax." *Id.* at 502 (internal quotations omitted). As such, the amendment, if passed, would impair that contract "by totally eliminating an important security provision" therein. *Id.*

This Court distinguishes the present case from *Davies*, in that the appellants argued that the proposed charter amendment would not impair contractual rights and supported this argument

by stating that the bondholders had "actual notice" that a citizens' petition would be filed prior to issuance of the bonds. That is, the bondholders knew when they entered into the bond contract that the citizens intended to challenge the new proposed liquor tax, and therefore they cannot claim that subsequent passage of the charter amendment would impair their contract. The Minnesota Supreme Court found this unconvincing and stated "the mere possibility that a valid petition for charter amendment would be filed cannot be viewed as somehow qualifying or diminishing the contractual rights of the bondholders." *Id.* at 503.

In the present case before this Court, however, there was more than a "mere possibility" of an "impairment" because the Contract the City has with the Consortium expressly agreed to terms that contemplated the impairment of the contract due to a legislative, judicial, or executive act. This City was also well aware of its own charter that provides for a very broad referendum power on any ordinance. This goes beyond knowledge – this is a bargained for exchange. In *Davies,* the bondholders contract *knew* of the *possibility* of a change in law, but they did not expressly contract for such a possibility. In the present case, the City of Saint Paul *did*. *Davies* further points out that an illogical outcome would occur if citizens were allowed to supersede the bond contract: "If that were the case, a municipality would be able to escape its own contractual obligations with impunity merely by later proposing a city charter amendment to supersede the special legislation which enabled it to act in the first place." *Id*. Such an outcome does not occur in the present case because the Force Majeure clause dictates that the legislative act must be "beyond the party's reasonable control." Additionally, in *Davies*, the City of Minneapolis did not reserve for its people any of the powers of initiative, referendum, or recall, unlike the present case before the court. *See Vasseur v. Minneapolis,* 887 N.W. 2d at 472 (Minn. 2016). Here, the Petitioners are not reaching into the terms of the contract to materially alter the rights and

responsibilities of one parties or purport to alter the terms of the contract itself. The referendum is a binary choice-up or down on an ordinance already passed by the City; the very sort of legislative act that is allowed by the Charter.

B. The Referendum Presents a Valid, Important Public Purpose.

It appears that the public purpose exception exists, at least in part, to ensure that the public, at large, is benefitted. Here, the entire city of Saint Paul is impacted by the City Council's decision to engage in organized collection. This Referendum does not by itself eliminate the process for organized collection, it simply ensures that the public indeed supports the idea of organized collection with the mechanism of a public vote. Without doubt, this Referendum may be frustrating for the City Council and city departments which spent countless hours carefully implementing the process for organized collection, but this tension between the electorate and its council is a healthy byproduct of Saint Paul being a home rule charter city.

Furthermore, in addressing the question of whether the subject matter of the local legislation would have "unreasonably adverse effects upon the general populace of the state", the Minnesota Supreme Court held that the process of organizing collection will "differ from community to community. It follows that local regulation would not have unreasonably adverse effects upon the general populace of the state." *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 462 (Minn. 2018). Within the City, the proposed Referendum upon the ordinance for organized collection represents the very type of flexibility that the legislature anticipated based on the plain language of § 115A.94. Notably, the Appellants in *Davies* did not argue that an important public purpose existed and instead clung to the proposition that no impairment of the contract existed. *Davies v. City of Minneapolis,* 316 N.W.2d 498, 502 (Minn. 1982). This Court finds that even if a substantial contractual impairment exists, the important public purpose of ensuring that

the constitution of a city is being followed and that the City Council is not infringing upon the clearly delegated voting rights granted to the people, justifies any alleged impairment.

C. The Balancing Test Favors Allowing the Referendum.

The third element of the *Christensen* framework essentially requires the Court to balance the reasonableness of any impairment with the public purposes advanced by the legislation. So, in the event that impairment were found, the Court must determine whether the Referendum's impact on the Contract is "based upon reasonable conditions and is of a character appropriate to the public purpose justifying the law's adoption." *Jacobson v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872 (Minn. 1986).

The City argues that placing the Referendum on the ballot "would create unnecessary uncertainty and chaos in the garbage collection currently happening within the City" and could cause "serious public health concerns." The record is devoid of any evidence to support these claims. This Court also ordered that the enforcement of Ordinance 18-39 will be suspended on June 30, 2019, thereby allowing residents sufficient time to obtain private solid waste collection services and functions to minimize any potential risk of uncertainty or chaos.

This Court has already established that the Referendum supports an important public purpose because it ensures that the constitution of Saint Paul is being a followed and protects voter rights. The suspension of Ordinance 18-39 will undoubtedly present an inconvenience to the City and its departments; however, this inconvenience cannot justify the circumvention of the plain language within the City's Charter and the right of the citizens to cast a vote.

CONCLUSION

For the reasons stated more fully above, this Court directs the City to include the Referendum on Ordinance 18-39 on the ballot for the November 5, 2019 General Election or

a Special Election held prior to the General Election, in accordance with Minn. Stat. §204B.44.

LC